RULES MADE BY THE HIGH COURT.

MR. T. P. RAMASUBBA AIYAR (*Secretary to Government*): Sir, I beg to lay on the table Rule 21 (1) and (2) of Order No. XL in the Schedule attached to the Civil Procedure Code, Regulation VIII of 1100, as amended by the High Court under Section 91 of the Civil Procedure Code:—

"21. (1) Any respondent although he may not have appealed from any part of the decree may not only support the decree on any of the grounds decided against him in the court below but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed an objection to such grounds or to the decree in the appellate court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate court may see fit to allow".

"(2) Such objections shall be in the form of a memorandum and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto".

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I beg to move that the Rule as amended by the High Court be taken up for consideration.

MR. P. N. KRISHNA PILLAI (*Secretary to Government*): I second it.

The motion was carried.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Karthikapalli*): I move that the following amendment may be made in the proposed amendment to Rule 21 of Order XL of the Schedule attached to the Civil Procedure Code.

In line 2 omit "*not only support the decree on*" after "*may*" and add "*support the decree also by taking objections to*"; and

in line 3, substitute "*or*" for "*but*" and omit "*cross*" after "*any*".

This Rule was modelled on the British Indian enactment. But there, it is not obligatory that objections to findings should be put in within the prescribed time, and the respondent is entitled to object to the findings against him at the time of appeal. But, in Travancore, by Rule 301 of the Civil Courts' Guide, it is made obligatory that objections to findings should be preferred within 15 days of the date of service of notice of the appeal. And by the amendment now under consideration the High Court wants to incorporate that Rule of the Civil Courts' Guide in the Civil Procedure Code. What I have to submit is that from the first part of the Rule it appears that any objection to findings is not necessary because it says:

"Any respondent although he may not have appealed from any part of the decree may not only support the decree on any of the grounds decided against him in the court below..."

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From this it would appear that the respondent can support the decree on any of the grounds decided against him even though he has not taken any objection. The proviso applies apparently only to the second part regarding the objections to the decree. All that I wish to propose is to make the wording clearer so as to avoid confusion later on. In the British Indian enactment there was no necessity for any amendment since it was not obligatory to put in any objections to findings. But here it has been made obligatory. Hence my amendment. As amended by me, the Rule would read thus:

"(1) Any respondent although he may not have appealed from any part of the decree may support the decree also by taking objections to any of the grounds decided against him in the court below or take any objection to the decree ....."

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is it Mr. Asan's point that the Rule as now amended by the High Court is ambiguous in that it does not make it clear that an objection petition has to be filed even when the grounds alone are objected and not any portion of the decree?

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): From the first part it would appear that the objection memo is not necessary.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is not my question. Is it Mr. Asan's point that the Rule as amended by the High Court is ambiguous in any respect?

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Katikapalli*): In legislative enactments we have to be very careful about the wording. We should not have unnecessary words since they are likely to mislead some people. Why should there be "*not only support the decree.....*" That is my point. It has absolutely no force when we find in the proviso,

"Provided he has filed an objection to such grounds....."

Moreover, as regards the point raised by the learned Law Member, what do you mean by the word '*grounds*' in '*not only support the decree or any of the grounds decided against him*'? Do you mean the grounds *for decision* or the grounds *advanced by the party*?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): My question does not at all relate to the elegance of the language. Is it the member's point that the Rule as amended by the High Court is ambiguous in any respect?

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): I do not say it is ambiguous, but it should be better worded. Because, from the first part it would appear that the word "*grounds*" means grounds advanced by the party, whereas in the second part, *viz.*, '*provided he has filed an objection to such grounds*', the word '*grounds*' seems to refer to the grounds of decision.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Grounds means grounds decided on the judgment.

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MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): What is the meaning of the word 'grounds' ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The grounds decided on by the judgment as a point against a party.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): That means grounds advanced by the party and decided against him and if that is the meaning to be attached I do not know why an objection should be preferred against the grounds put forth by him in the pleadings. And with the permission of the Chair, I will request the House to consider that in the first place instead of "grounds decided" "findings" may be put in and in the second place also, instead of 'grounds', 'findings' may be substituted so that the difficulty may be cleared. What I submit is, when we are considering an alteration in the present enactment we have to be very careful in altering the rules. We could not mend them always. So, if the President allows me and the Law Member has no objection, what I say is, 'findings' may be substituted for 'grounds' decided in the first part and the same put in for "grounds" in the second part also. With these few words I move my amendent for the consideration of the House.

MR. V. CHELLAM PILLAI (*Tovala*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. It has been stated by Mr. Asan that the Rule as amended by the High Court and as it now stands is not capable of any ambiguity. The idea that is involved in a Rule is two-fold. One is, that if a case is decided against a party and if he appeals against the decision and if the respondent in supporting the decree wants to take advantage of some of his points rejected by the lower court, he must file a written petition, a notice as it were, in the court of appeal saying that he wants to object to those points. That is to say, in supporting the actual decision a respondent can urge any argument though the same argument was rejected by the first court provided he files a written memorandum showing his intention to do so. The other idea involved in the Rule is, when a case is decided partly against a party and partly in his favour and one party appeals to the court of appeal, the respondent may himself object to that portion that is against him by filing a cross objection memorandum. In this second case the memorandum will be an objection against the decree, a portion of it. In the first case, it will be an objection against some of the grounds only. Both these ideas are incorporated in this Rule. There is no ambiguity about that. But, I fear that if Mr. Asan's amendment is put in, not only will the Rule be not improved, but even an ambiguity will be created, if not an entirely wrong idea.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): Wha is the force of 'may not only'?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Mr. Asan's point is not that that portion is capable of being misunderstood. That being so, when the Rule Committee and the High Court have passed the language, I doubt whether this House should

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exercise their judgment in trying to improve upon the language which is sufficiently communicative of the idea involved. Apart, from that Mr. Asan asks, what is the force of the words 'may not only support the decree'. The force is this, that the respondent can do two things. In the first place he can take objections to the grounds or findings. In the second place he can appeal against a portion of the decree. The two ideas are there and therefore the expressions "not only" and "but" are used to show that a party can do both things. On the other hand if we accept Mr. Asan's amendment it will mean, that a respondent can do *one* of these two things. That is to say, he can either support the decree and object to the findings *or* he can object to a portion of the decree. But he can't do both because Mr. Asan uses the word "or",

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): Does not that word occur in the second part also?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vaikl*): The word "or"? It would suggest that he can do only one of two things, namely, object to the findings or object to the decree. Is not therefore the expression "not only," followed by "but" better?

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): What do you say to the second part? Is it inconsistent?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*); I do not think so. The High Court amendment when passed would mean that a respondent can do both, *i. e.*, not only take objection to the findings, but also take objection to the decree. Therefore it seems to me, whatever may be the supposed inelegance of the language, the Rule as it is is sufficiently communicative of the ideas involved.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): Does not my friend think that the word 'grounds' occurring in the two parts of the same section is capable of different interpretations?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No, I do not think it is capable of different interpretations.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): Then what is the meaning of the word 'grounds' occurring in first part, line 3?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Grounds decided against a party.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): There does the word 'grounds' refer to the grounds advanced by the party?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. It refers to the grounds of judgment, grounds decided on against him in the judgment. Against any of the grounds decided against him, a respondent may object; provided he has put in an objection petition.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*): Does not that mean grounds advanced but decided against him?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. A ground may not have been advanced by a party at all, Yet it may be *decided* against him.

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MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*) : Why should the word 'decided' be there?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : To indicate "grounds" *decided* against him.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Karthikapalli*) : Then should not that word appear in the Second part also?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Why? It appears to me that the language as it stands is sufficiently clear. This language has been approved by the Rule Committee as well as by the High Court. I think that the House may accept it.

MR. A. THANU PILLAI (*Trivandrum*) : Sir, I oppose the amendment. The language of the Rule as it is now placed before the Council could have been happier. The amendment, as it is, is open to greater objection. As the Law Member stated the idea is clear from the language. But the amendment of my friend, I am afraid, will make doubtful the sense intended to be conveyed By incorporating the amendment the Rule will read thus:—

"Any respondent may support the decree on any of the grounds decided against him or take any objection to the decree which he could have taken by way of appeal."

There may be instances in which both these things have to be done in the same case. The Rule, as it stands, provides for both. The proviso relates to either cases separately. That is to say, it does not mean that there should be an objection taken to the grounds that are decided against the respondent and also the portion of the decree against him in the same case. What is stated in the rule is that when he wants to support the decree even on the grounds decided against him he has to file an objection to the findings. The respondent may also take objections to that portion of the decree which is against him. I think the Rule, as proposed, is clear. But the amendment of my friend will make the Rule ambiguous. So, I oppose the amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara* cum *Kartikapalli*) : I beg to withdraw the amendment.

PRESIDENT : I hope the House permits the amendment to be withdrawn.

The amendment was, by leave, withdrawn and the Rule as amended by the High Court was approved.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I move that the rule as approved be taken up and passed at a subsequent meeting.

MR. T. P. RAMASUBBA AIYAR (*Secretary to Government*): Isecond it.

The motion was carried.

PRESIDENT : We will now adjourn and reassemble at half past two, tomorrow afternoon.

The Council rose at 3-30 P. M. of the Clock.

T. P. RAMASUBBA AIYAR,
Secretary to the Legislative Council.

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